IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CONTEMPT PETITION NO.278 OF 2004

Kanyaiyalal Motilal Talera,
Age 66 years, Occ: Business,
residing at Mohini Mahal,
Dr. Koyaji Road,
Pune-411 001. .... Petitioner

- Versus -

1. Pimpri Chinchwad Municipal Corporation through the Municipal Commissioner, PCMC, Mumbai Pune Road, Pimpri, Pune-411 018.

2. The City Engineer, Pimpri Chinchwad Municipal Corporation, Mumbai-Pune Road, Pimpri, Pune-411018.

3. The Special Land Acquisition Officer, Pimpri Chinchwad Municipal Corporation, Mumbai-Pune Road, Pimpri, Pune-411018.

4. The Municipal Commissioner, Pimpri Chinchwad Municipal Corporation, Mumbai-Pune Road, Pimpri, Pune-411018. .... Respondents

Shri Madhav Jamdar for the Petitioner.

Shri N.V. Walawalkar for the Respondent Nos.1, 2 and 4.

Ms G.P. Mulekar, Asst. Government Pleader, for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 30, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties.

2. The grievance of the petitioner relates to non-compliance of the order dated 14-7-2003 passed in Appeal From Order No.89 of 2003 by the learned single Judge of this Court. Undisputedly, the order was passed pursuant to the Consent Terms filed by the parties in the said appeal. The order was to the effect that:-

> "In the facts and circumstances of the case and in the larger interests of justice, the concerned Special Land Acquisition Officer, as referred to in clause (1) of the Consent Terms, shall complete the acquisition proceedings and declare award as expeditiously as possible but in any event on or before 31.3.2004."

3. The relevant clauses of the Consent Terms arrived at between the parties read thus:-

> "1. It is hereby agreed that the Appellant - Corporation shall commence the acquisition proceedings with respect to land bearing S.No.27B/1-B (Part) and bearing C.T.S. No.1054 (Part) situate

> at Village Chinchwad Tal. Haveli, District - Pune which is required for road widening within a period of 15 days from today. The Special Land Acquisition Officer shall complete the same and declare the award as expeditiously as possible.
>
> 2. ......
>
> 3. ......
>
> 4. In view of these Consent Terms the Order dated 7.10.2002 passed by the Learned 5th Joint Civil Judge, Senior Division, Pune below Exh. in Special Civil Suit No.1111 of 2001 stands vacated, and Special Civil Suit No.1111 of 2001 stands disposed of in the above terms."

4. Undisputedly, the petitioner had filed Special Civil Suit No.1111 of 2001 in the Civil Court at Pune wherein by way of an order of injunction the respondent-Corporation and its officers and agents were restrained from causing any disturbance in the property of the petitioner or causing any damage to the suit

property till the disposal of the suit. The matter thereupon was carried in appeal being Appeal From Order No.89 of 2003 and ultimately by the Consent Terms referred to above, the matter was disposed of.

5. The learned Advocate for the petitioner, placing reliance upon the decision of the Apex Court in the matter of **Salkia Businessmen's Association and others v. Howrah Municipal Corporation and others,** reported in AIR 2001 SC 2790 and of the learned single Judge of this Court in **Shaheda Sarwar Khan v. Sarwar Ahmed Rauf Khan and others,** reported in 1999 (1) Mh.L.J. 31, submitted that it is not permissible for the Court in contempt proceedings to go beyond the decree, but only to ensure due performance of the orders and decrees passed by this Court and bearing the same in mind, since there was specific direction issued under the order dated 14-7-003 for completion of the acquisition proceedings within a specified time, and the respondents having failed to comply with the said order, they are liable to be prosecuted for contempt of Court. The learned Advocate for the respondent-Corporation, on the other hand, submitted that as far as the Corporation is concerned, immediately after the passing of the said order and on 14-7-2003 the Corporation forwarded the necessary proposal for acquisition of the land in question and, therefore, there is absolutely no case for proceeding

against the Corporation for the alleged violation of the order dated 14-7-2003.

6. The learned Advocate for the respondent No.3 submitted that apart from the fact that the Land Acquisition Officer was not a party to the Appeal From Order No.89 of 2003, the direction was to complete the acquisition proceedings within the specified time. There was no specific direction that the land was necessarily required to be acquired by the Government or the Corporation. Besides, from the records it was brought to the notice of the Land Acquisition Officer that the land in question had already been acquired and the award in that respect was also passed in the year 1988. However, there was a clerical mistake in recording the C.T.S. number and instead of recording "1054", it was recorded as "1057".

7. The learned Advocate for the petitioner, however, drawing attention to Section 13A of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act", has submitted that the authorities had ample power to make necessary corrections in relation to clerical mistakes in the award. It is not the case of the respondents that they have made any such correction and, therefore, it is too late in the day to contend that there was a mistake in recording of the C.T.S. number

in the award.

8. Plain reading of the Consent Terms and the clause (1) particularly thereof quoted above, discloses that the parties to the appeal i.e. the petitioner and the Corporation had arrived at a settlement that the Corporation shall commence the acquisition proceedings in relation to C.T.S. No.1054 (Part) within fifteen days from the date of the agreement and thereupon the Special Land Acquisition Officer shall complete the land acquisition proceedings as expeditiously as possible. Based on the said agreement between the parties i.e., between the petitioner and the Corporation, this Court by order dated 14-7-2003 had passed the order to the effect that the Land Acquisition Officer shall complete the proceedings as expeditiously as possible and in any case on or before 31-3-2004.

9. As rightly submitted by the learned Advocate for the respondent No.3, there is no specific agreement between the parties, even between the petitioner and the Corporation, leave aside the State, that the land in question has necessarily to be acquired and that the same should be acquired within a specific period. The Corporation was merely to take necessary steps to initiate the acquisition proceedings. But at the same time the parties were at liberty to place all the

contentions before the Land Acquisition Officer and that is clear from the agreement arrived at between the parties under Clause (2) of the Consent Terms which reads that:-

> "The Respondent is entitled to place in said Land Acquisition proceedings all material available with him and all contentions necessary for the purpose of computing the compensation as per the provisions of law."

The contention in relation to the claim of compensation would necessarily include disclosure of interest of the parties in the land which is subjected to acquisition. Being so, it would also include the issue in relation to the extent of the land available for acquisition. In fact it is well-settled that the land which is once acquired need not and cannot be acquired again as it is a settled law that in land acquisition proceedings the acquisition is to put an end to the interest of the private parties in the land acquired. The Apex Court in **Meher Rusi Dalal v. Union of India and others,** reported in (2004) 7 SCC 362 had clearly held that:-

> "It is settled law that in land acquisition proceedings the Government

> cannot and does not acquire its own interest. The interest which is acquired in land acquisition proceedings is interest of third parties."

In **Govt. of Bombay v. Esufali Salebhai,** reported in 12 Bom.L.R. 34, considering the fact that the Government had acquired ownership of the land on which there stood buildings belonging to the claimants, it was held that the Government was bound to acquire and pay only for the superstructure, as it was already the owner of the site. Further, in **Dy. Collector, Calicut Division v. Aiyavu Pillay,** reported in (1911) 9 IC 341, which was referred to by the Apex Court in **Meher Rusi Dalal's** case (supra), it was held that:-

> "It is, in my opinion, clear that the Act does not contemplate or provide for the acquisition of any interest which already belongs to Government in land which is being acquired under the Act, but only for the acquisition of such interests in the land as do not already belong to the Government."

The Apex Court in Meher Rusi Dalal's case, while referring to the said observation, had expressed

complete agreement with the said observation and it was held that:-

> "When Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own."

10. Apart from the above facts, as rightly submitted by the learned Advocate for the respondent No.3, there is no specific direction to the respondent to acquire the land under C.T.S. No.1054 as such. Indeed, whether a land is to be acquired or not, it is entirely in the discretion of the State and the concerned body for whose benefit the land is to be acquired. Being so, the directions issued under Clause (2) to complete the land acquisition proceedings within a specified period cannot be construed to mean that the respondents were directed to acquire the land on or before 31-3-2004. In fact the decision of the Apex Court in **Salkia Businessmen's Association's** case (supra) in this regard, rather than assisting the petitioner, justifies the above conclusion. It was clearly held therein that "It was not permissible to go behind the same to ascertain the substance of it or nature of compliance when the manner,

mode, and place of compliance had already been stipulated with meticulous care and detail in the order itself." In other words, the decision has reiterated the well-settled law that neither the executing Court nor the Court dealing with the complaint under the Contempt of Courts Act can go beyond the decree. It is the decree or the order itself, as it stands, will have to be enforced and if not enforced can warrant action under the Contempt of Courts Act.Being so, since the order dated 14-7-2003 merely directs the conclusion of the land acquisition proceedings by 31-3-2004, it cannot be construed to mean a mandate to acquire the land.

11. As regards the land acquisition proceedings, it has been clarified on behalf of the respondent No.3 that the land in question was already acquired under the Award passed in 1988. That being the situation, it cannot be said that the authorities are duty bound to proceed to have another land acquisition proceedings for the land which has been already acquired.

12. The decision of the learned single Judge in **Shaheda Sarwar Khan's** case (supra) is also on the same point as it states that in contempt proceedings the Court is not warranted to sit in judgment as to the correctness, legality or validity of the order in question.

13. In the facts and circumstances of the case, therefore, there is no case made out for proceeding against the respondents for contempt of Court as such. In case the petitioner is aggrieved by the decision on the part of the respondents not to proceed to acquire the land on the ground that it has already been acquired, the remedy to the petitioner lies elsewhere.

14. The learned Advocates for the respondents while referring to the order passed by the lower Court on 7-10-2002 and drawing attention, particularly to para 5 thereof, sought to argue that similar contention was raised by the respondents before the trial Court and it was rejected. Obviously it was rejected merely because the records did not disclose the survey No.1054 and it disclosed survey No.1057. As it has been clarified in the affidavit that the same was on account of mistake in recording of the number, the decision which was passed during the pendency of the suit, which is an interim order, cannot amount to final decision as regards the rights of the parties in relation to the said issue. Undoubtedly, the said issue is wide open for adjudication in appropriate proceedings. Nevertheless, as it has been clarified in these proceedings that there was a mistake in recording of the number and the land in question has already been acquired, the question of proceeding against the respondents for violation of the

order dated 14-7-2003 does not arise at all. A mistake in recording of the number cannot change the factual situation if the land in question has really been acquired. Same cannot lead to the conclusion about violation of the order dated 14-7-2003 as there is no mandate to the respondents to acquire the land as such.

15. Undoubtedly, in terms of Section 13A of the said Act, the Collector is empowered to make necessary corrections as regards the clerical and arithmetical mistakes in the Award. However, mere failure in that regard on the part of the Collector cannot enure to the benefit of the petitioner to contend that there was violation of the order of 14-7-2003 when in fact the said order did not direct acquisition of land as such.

16. For the reasons stated above, therefore, there is no case for proceeding against the respondents for contempt of Court and the petition is dismissed.